

N.Y.S.D. Case #
04-cv-8141(DAB)

10-5038-cv

Public Employees Retirement System of New Mexico, et al. v. Rothstein et al.

MANDATE

UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

SUMMARY ORDER

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO A SUMMARY ORDER FILED ON OR AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY FEDERAL RULE OF APPELLATE PROCEDURE 32.1 AND THIS COURT'S LOCAL RULE 32.1.1. WHEN CITING A SUMMARY ORDER IN A DOCUMENT FILED WITH THIS COURT, A PARTY MUST CITE EITHER THE FEDERAL APPENDIX OR AN ELECTRONIC DATABASE (WITH THE NOTATION "SUMMARY ORDER"). A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF IT ON ANY PARTY NOT REPRESENTED BY COUNSEL.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 15th day of February, two thousand twelve.

PRESENT: RICHARD C. WESLEY,
SUSAN L. CARNEY,
Circuit Judges.
ROSLYNN R. MAUSKOPF
*District Judge.**

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: April 13, 2012

In Re: American International Group, Inc Securities
Litigation

ALAN ROTHSTEIN, MOLLYE ROTHSTEIN,

Objectors - Appellants,

MARISA ROTHSTEIN, SHARYN ROTHSTEIN,

Objectors,

-v.-

10-5038

OHIO PUBLIC EMPLOYEES RETIREMENT SYSTEM, STATE TEACHERS
RETIREMENT SYSTEM OF OHIO, OHIO POLICE AND FIRE PENSION
FUND,

Plaintiffs - Appellees,

*Judge Roslynn R. Mauskopf, of the United States District Court for the Eastern District of New York, sitting by designation.

MANDATE ISSUED ON 04/13/2012

1
2 and,

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4 PUBLIC EMPLOYEES RETIREMENT ASSOCIATION OF NEW MEXICO,
5 MICHAEL FEDER, on behalf of himself and all others similarly
6 situated, PUBLIC EMPLOYEES' RETIREMENT SYSTEM OF
7 MISSISSIPPI, JEROME NOLL, Individually and on behalf of all
8 others similarly situated, STEPHAN FRANK, on behalf of
9 himself and all others similarly situated, JOSEPH SCUILLA,
10 EUGENE OLSON, ROBERT J. CASEY, II, on behalf of himself and
11 all others similarly situated, LISA M. CROUCH, on behalf of
12 herself and all others similarly situated, MICHAEL CASSIDY,
13 on behalf of herself and all others similarly situated, ANNE
14 E. FLYNN, ROBERT D. JAFFEE IRA ROLLOVER, ROBERT D. & PHYLLIS
15 A. JAFFEE FAMILY FOUNDATION, ROBERT D. JAFFE, as Trustee of
16 the Robert D. Jaffee Revocable Trust, SAN FRANCISCO
17 EMPLOYEES' RETIREMENT SYSTEM,

18
19 *Plaintiffs,*

20
21 -v.-

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23 PRICEWATERHOUSECOOPERS LLP,

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25 *Defendant - Appellee,*

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27 and,

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29 MAURICE GREENBERG, HOWARD SMITH, THOMAS TIZZIO, MARTIN J.
30 SULLIVAN, CHRISTIAN MILTON, FRANK J. HOENEMEYER, AXEL I.
31 FREUDMANN, RICHARD A. GROSIK, DONALD P. KANAK, PATRICIA R.
32 MCCANN, STARR INTERNATIONAL COMPANY, INC., CORINNE P.
33 GREENBERG, MAURICE R. HANK GREENBERG, C.V. STARR & CO.,
34 INC., MICHAEL J. CASTELLI, CITIGROUP GLOBAL MARKET, FKA
35 SALOMON SMITH BARNEY, GOLDMAN SACHS & CO., JP MORGAN CHASE &
36 CO., MERRILL LYNCH AND COMPANY, MORGAN STANLEY, MICHAEL L.
37 MURPHY, RICHMOND INSURANCE COMPANY, LIMITED, UNION EXCESS
38 REINSURANCE COMPANY, INCORPORATED, EVAN GREENBERG, ELI
39 BROAD, AXA FINANCIAL, INC., WACHOVIA SECURITIES, INC., JOHN
40 A. GRAF, AMERICAN INTERNATIONAL GROUP, INC., GENERAL
41 REINSURANCE CORPORATION, RONALD FERGUSON, JOHN HOULDSWORTH,
42 RICHARD NAPIER,

43
44 *Defendants,*

1 and,

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3 COMPLETE CLAIMS SOLUTIONS, LLC,

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5 *Claims Administrator - Appellee.*
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7
8 FOR APPELLANT: N. ALBERT BACHARACH, JR., Gainesville,
9 FL.

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11
12 FOR APPELLEE: THOMAS G. RAFFERTY, (Antony L. Ryan, *on*
13 *the brief*), Cravath, Swaine & Moore LLP,
14 New York, NY, *for Defendant-Appellee*
15 *PricewaterhouseCoopers LLP.*

16
17 THOMAS A. DUBBS, (Louis Gottlieb, Barry
18 Michael Okun, *on the brief*), Labaton
19 Sucharow LLP, New York, NY, *for*
20 *Appellees-Plaintiffs Ohio State Funds;*
21 *Co-Lead Counsel to the Class.*

22
23 ALAN S. KOPIT, Hahn Loeser & Parks LLP,
24 Cleveland, OH, *Special Counsel to the*
25 *Attorney General of Ohio and the*
26 *Appellees-Plaintiffs Ohio State Funds;*
27 *Co-Lead Counsel to the Class.*
28

29 Appeal from the United States District Court for the
30 Southern District of New York (Batts, J.)
31

32 **UPON DUE CONSIDERATION, IT IS HEREBY ORDERED, ADJUDGED**
33 **AND DECREED** that the judgment of the United States District
34 Court for the Southern District of New York be **AFFIRMED**.

35 Objector-Appellants, the Rothsteins, appeal from a
36 judgment of the United States District Court for the
37 Southern District of New York (Batts, J.), overruling their
38 objection and approving a settlement between Plaintiffs-

1 Appellees and Defendants-Appellees. We assume the parties'
2 familiarity with the underlying facts and procedural
3 history.

4 The Rothsteins appeal the district court's denial of
5 their objection to the settlement on the basis of a
6 purportedly defective Notice of Settlement. They argue that
7 the Notice of Settlement failed to satisfy the requirements
8 of the Private Securities Litigation Reform Act of 1995
9 ("PSLRA") because it did not include a statement from each
10 party regarding the amount of damages per share each
11 believed would be recoverable if plaintiffs were to prevail
12 on each claim. The plain language of 15 U.S.C. § 78u-
13 4(a)(7)(B)(ii), on which the Rothsteins rely, however, does
14 not require that the parties provide their respective views
15 about recoverable damages in the event they disagree about
16 the amount recoverable. Rather, the plain language of the
17 PSLRA clearly requires an amount recoverable be provided
18 *only* in the case that the parties agree on that amount. 15
19 U.S.C. § 78u-4(a)(7)(B)(i). Here, the parties disagreed
20 about damages recoverable, making 15 U.S.C. § 78u-
21 4(a)(7)(B)(ii) rather than (B)(i) applicable. 15 U.S.C.
22 § 78u-4(a)(7)(B)(ii) only requires parties who disagree
23 regarding the amount of damages per share to provide "a

statement from each settling party concerning the issue or issues on which the parties disagree." The Notice of Settlement complied with the PSLRA in this regard. 15 U.S.C. § 78u-4(a)(7)(B)(ii) required no more.

The Rothsteins' interpretation of the statute contradicts the statute's plain language and finds no support in the precedent of this or any other circuit. We decline to read into the PSLRA a requirement that Congress did not include. *See Russello v. United States*, 464 U.S. 16, 23 (1983). The district court properly overruled the Rothsteins' objection.

For the foregoing reasons, the judgment of the district court is hereby **AFFIRMED**.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

A circular official seal of the United States Court of Appeals, Second Circuit, is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.

A True Copy

Catherine O'Hagan Wolfe, Clerk

United States Court of Appeals, Second Circuit

A circular official seal of the United States Court of Appeals, Second Circuit, is stamped over the signature. The seal contains the text "UNITED STATES", "SECOND CIRCUIT", and "COURT OF APPEALS" around a central emblem.